IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.3280 OF 2004

Dhirendra R.Thakkar & Anr. ... Petitioners.

Vs.

State of Maharashtra & Ors. ...Respondents.

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Mr.A.A.Joshi i/b. Nivit Srivastava for the Petitioners.

Mr.R.C.Mane, AGP for Respondent No.1.

Mrs.A.R.Joshi for the B.M.C.

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CORAM : DR.D.Y.CHANDRACHUD, J.

March 14, 2005.

P.C. :

The Petitioners have carried out redevelopment of certain immovable property being Survey No.467 (part) of Mazgaon Division at Champsey Bhimji Road, Anjirwadi (A), Mazgaon, Mumbai, under Development Control Regulation 33(7). Section 144B of the Mumbai Municipal Corporation Act, 1888, provides for levy of property tax at

reduced rates in respect of redevelopment of a specified nature. Properties which have been redeveloped under DCR 33(7) are not listed among properties in respect of which a reduction can be availed under Section 144B. This has also been so held in the judgment of a Division Bench of this Court consisting of Mr.Justice A.P.Shah & Smt.Justice V.K.Tahilramani, delivered on 14th January 2002 in **Akruti Co-operative Hsg.Society Ltd. vs. B.M.C.**, (Writ Petition No.1894 of 2000). The Division bench held thus:

> "It is apparent from bare reading of Section 144B that the state Government has power to fix the reduced rates of property tax in respect of three categories of buildings i.e. (1) Low Cost Housing Scheme for economically weaker sections and lower income group by the MHADA, (2) buildings constructed under the slum rehabilitation scheme declared under the Maharashtra Slum Areas (Improvement, clearance and Redevelopment) Act, 1971 and (3) any other housing scheme of the Central Government, State Government or Corporations for the purposes of slum improvement and use for residential purposes.

In the present case the property is developed under regulation 33(7) of the Development Control Regulations, 1992. The petitioners building is not covered by the provisions of section 144 of the Act or the Notification issued thereunder and therefore, is not entitled to reduced rate of property tax as provided by the Notification."

The Petitioners have claimed that they are also entitled to an exemption under Section 83(1)(n) of the Maharashtra Housing and Area Development Act, 1976. Section 83 provides for those cases where lands and buildings shall be exempt from payment of cess. Clause (n) deals with buildings erected or which may be erected in an area, after the date on which the Bombay Building Repairs and Reconstruction Board Act, 1969 came into force in such area. The Petitioners addressed a representation dated 4th April 2003 to the Housing and Special Assistance Department of the State Government to which there was a response on 12th June 2003 by which the Petitioners were called upon to submit certain documents for the purposes of verifying their claim to the effect that they

are exempted by Section 83(1)(n). Counsel appearing on behalf of the Petitioners states that the information which has been sought by the letter dated 12th June 2003 of the Housing and Special Assistance Department (Exh.L) shall be furnished within a period of two weeks from today. The First Respondent shall carry out a verification of the claim of the Petitioners of being exempted under Section 83. There is no question of the Government conferring or granting an exemption since exemption is conferred by the statute. However, the question as to whether a person is entitled to the benefit of the exemption is subject to due verification that the conditions stipulated in Section 83 are duly fulfilled. This exercise shall be carried out by the First Respondent no later than 8 weeks from the date on which a complete set of documents is furnished by the Petitioners as directed hereinabove.

In the event that the Petitioners have any other subsisting grievance in regard to the computation of ratable value, it would be open to them to pursue the remedy of an appeal under Section 217 of the Mumbai Municipal Corporation Act, 1988. In the event that an appeal is filed within a period of four weeks from today, the

appeal will be heard and disposed of by the Chief Judge of the Small Causes Court, Mumbai, under Section 217 without considering the bar of limitation. Since the auction notice which forms the subject matter of the present proceedings included a component of cess in respect of which the Petitioners have claimed exemption under Section 83(1)(n), there shall be a direction to the effect that until a decision is taken by the First Respondent, the auction notice shall not be implemented in so far as the demand for cess is concerned. The Petition is accordingly disposed of.

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